HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.CHANDRAIAH

Writ Appeal No.1301 of 2006

-
-

Between:

Veeranna and others.

……Appellants.

And

Joint Collector, Medak
at Sangareddy and others.

……Respondents

:: J U D G M E N T ::

Counsel for the Appellants : Sri C.Pratap Reddy

December 18, 2006

Per G.S. SINGHVI, C.J.

Having failed to persuade the learned Single Judge to set aside order dated 24-5-2004 passed by Revenue Divisional Officer, Sangareddy, Medak District (respondent No.2), whereby Occupancy Rights Certificate was granted in favour of respondent No.4, Vital Rao son of Babu Rao under Section 10 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, and order dated 17-4-2006 passed by Joint Collector, Medak at Sangareddy (respondent No.1), dismissing the appeal filed by them against the order of the Revenue Divisional Officer, the appellants have preferred this appeal under Clause 15 of the Letters

Patent.

A perusal of the record shows that on an application made by him, Occupancy Rights Certificate was issued in favour of respondent No.4 vide proceedings dated 31-8-1977. The appeal preferred by the appellants was dismissed by respondent No.1. Writ Petition No.19481 of 1993 filed by them was dismissed by the learned Single Judge on 11-11-1997. However, the Division Bench allowed the writ appeal and set aside proceedings dated 31-8-1977 with a direction to respondent No.2 to pass fresh order.

In compliance of order dated 12-2-2001 passed by the Division Bench in Writ Appeal No.126 of 1998, respondent No.2 conducted fresh enquiry and again concluded that respondent No.4 alone is the protected tenant and occupant of the land comprised in Survey No.48 measuring Ac.13.04 gts. situated at Moratga Village of Raikode Mandal and he is entitled to Occupancy Rights Certificate. The appeal filed against the order passed by respondent No.2 was dismissed by respondent No.1 vide his order dated 17-4-2006.

The learned Single Judge, who dealt with Writ Petition No.17198 of 2006 filed by the appellants for quashing orders dated 24-5-2004 and 17-4-2006 passed by respondent Nos.2 and 1 respectively, has briefly noticed the factual matrix of the case, the history of litigation instituted by the appellants, the findings recorded by respondent Nos.2 and 1 respectively on more than one occasion and held that in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court cannot interfere with the finding of fact recorded by the original or appellate authority.

We have heard learned counsel for the parties and perused the record.

The limitations of the High Court's powers of judicial review in such matters are well recognised. It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is

vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial authority which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of the rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous considerations/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[1], the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> "i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
>
> ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is

not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court."

The ratio of the aforesaid judgment has been reiterated in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[2]

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3], their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawa Ltd.**[4], the Supreme Court considered the question whether in exercise power under Article 227, the High Court can interfere with the discreti exercised by the Tribunal under Section 11-A of the Industrial Disputes A 1947 and observed :

> "Under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. It is entitled to scrutinize the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it can in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. But it is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it."

In **R.S. Saini v. State of Punjab and others**[5], the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[6], the Supreme Court traced the history of the High Court's jurisdiction to issue writs, orders or

directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> "i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
>
> ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
>
> iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or

substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

In the present case, we find that after holding fresh enquiry into the matter, respondent Nos.2 and 1 concurrently held that respondent No.4 was entitled to Occupancy Rights Certificate. In his order, respondent No.2 referred to P.T. Register and khasra pahani for the year 1954-55 and observed:

"On perusal of original Khasra pahani for the year 1954-55 Vithoba and Bapu are recorded as Tenants on Batai. Later, Vithoba and Kistaiah are recorded as occupants till 1972-73. In some pahanies, Vithoba S/o.Kistaiah is recorded as Tenants, but as per enquiry report of M.R.O. Vithoba is not the s/o late Kistaiah as they are different persons and they are not possession as on crucial date 1.11.1973. The only name of Vittal Rao S/o.Bapu Rao is recorded as pattedar and possessor for all the consequent related pahanies continuously. It can be seen from the enquiry report and M.R.O records the petitioners and their ancestors claimed right over Sy.No.48

only in the year 1993 when the Government of Andhra Pradesh issued notification to acquire the part of the land for Singoor Project. Till then it is only respondent who is in actual possession of the land in Sy.No.48 by recording his name as pattedar and possessor. From this it can be presumed that only to claim compensation the petitioners came forward to claim the right of tenancy but they never aware of such right. All the records support the claim of respondent only. There are no records to hold that the ancestors of the petitioners ever continued in possession of the land Sy.No.48 as tenants."

Respondent No.1 made an independent evaluation of the records and approved the finding recorded by respondent No.2. This is clearly evinced from the following extracts of order dated 17-4-2006 passed by respondent No.1.

"On perusal of preliminary enquiry report U/R 4(1) of A.P. (T.A) Tenancy Rules, 1973 in item No.2, the Deputy Tahsildar 39-E Tenancy prepared on 2-4-1974 noted that as per tenancy record maintained in the year 1950 the names of Vittoba & Kistaiah have been recorded as P.T. in respect of Sy.No.48 extent Ac.13.04 gts. situated a t Moratga and Sri Kande Rao as pattedar. It is a Dastagardan land and the P.T. died and survived by only son Sri Vittal Rao who was present at the time of enquiry and he stated that they have been in possession of the said land since (40) years doing self cultivation and they are also paying rent of half batai from the produce to Sri Mudgal Rao since last 3 years. Succession U/S 40 of Tenancy Act has not been granted in favour of Vittal Rao, the legal heir. The total holding of P.T. is Ac.10.00 gts. as his own patta land and the total holding of pattadar is more than 17.00 gts. and the provisional list in Form No.1 prepared and submitted for the approval of the Tribunal.

In para No.(5) of the same report, the Deputy Tahsildar has recorded that as per tenancy record prepared in the year 1950 Sri Vitoba has been recorded as P.T. in respect of Sy.No.48 ext: Ac.13.34 and Sri Kande Rao as pattadar. It is a Dastagardan land. During the enquiry, the P.T. was not present. It was ascertained from the patwari that Sri Vitoba is not residing at Moratga and he left the village some (10) years back and at

present his whereabouts are not known how Sri Vithal Rao who is also a protected tenant of the same Sy.No.48 to an extent of Ac.13.04 gts. is in possession of the portion of land which was recorded in the name of patta land at Moratga village. It is also revealed that in Tenancy provisional list Sri Bapu Rao (died) L.R. Vithal Rao is recorded in the P.T. column in respect of Sy.No.48 to an ext:Ac.13.04 gts. and the name of Vithoba S/o.Kistaiah in respect of Sy.No.48 to an extent of Ac.13.34 gts. only but in remarks column the P.T. Sri Vithoba S/o.Kistaiah was not residing at Moratga village.

On verification of provisional list of protected tenants it was recorded as Sri Bapu Rao (died) L.R. Vithal Rao in respect of Sy.No.48 to an extent of Ac.13.04 gts. and the same was figured in provisional prepared during 1974. The Revenue Divisional Officer, Sangareddy has issued notices to both parties in respect of Sy.No.48.

The Revenue Divisional Officer, Sangareddy in his impugned orders dated:24-3-2004 has observed that on perusal of records it is clear that one Vittal Rao the respondent herein was declared as P.T. by the then Tahsildar, Zahirabad through a certificate dated:26-4-1958 and he was declared as owner of the land in Sy.No.48 admeasuring Ac.13.04 gts. of Moratga village. It is further observed that in the year 1977 final patta certificate issued in favour of Vittal Rao S/o.Bapu Rao under the provisions of A.P. (T.A.) Abolition of Inams Act as the claim of Sri Vittal Rao was established as P.T. under A.P. (T.A.) Tenancy & Agricultural Lands Act. The Revenue Divisional Officer has also observed that in Khasra Pahani 1954-55 the names of Vithoba and Bapu were recorded as tenants on batai and that later the names of Vithoba and Kistaiah were recorded as occupants till 1972-73. It is also recordd that Vithoba is not the son of late Kistaiah and they are different persons and they were not in possession on the crucial date i.e., 1-11-1973. It is also recorded that in order to claim the compensation since some portion of the subject matter land was acquired for Singoor Project the petitioners and their ancestors raised a claim. Moreover, all the records support the claim of the respondent herein only.

Moreover, the same matter was challenged before the Joint Collector during the year 1993 by the

appellants herein and the then Joint Collector while observing that at the very outset the appeal is time barred i.e., after 17 years of passing of the impugned orders. It was also observed that the appellants are aware of the fact that the disputed land has been acquired by the Government and award passed by the Land Acquisition Officer by a couple of years ago and that the matter was referred to civil court for title dispute in O.P.No.529/87 on the file of the Addl. District Judge, Medak. The then Joint Collector held that the appellants contention that they were unaware of the certificate issued 17 years ago in favour of the respondents all these years and came to know only after obtaining certified copy is untenable."

Learned counsel for the appellants wanted us to re-evaluate the entire evidence and disturb the finding of fact recorded by the two authorities with which the learned Single Judge expressed his agreement, but we have not felt persuaded to agree with him. In our considered view, mere possibility of this Court forming a different opinion can never justify issue of a writ of certiorari to quash the orders passed by judicial and quasi-judicial authorities.

With the above observations, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.2767 of 2006 filed by the appellants for interim suspension is also dismissed.

G.S.SINGHVI, C.J.

18th December, 2006

G.CHANDRAIAH, J.

ARS

---

[1] AIR 1964 SC 477

[2] (2002) 9 SCC 375 = JT 2002 (8) SC 69

[3] AIR 1970 SC 61

[4] (1984) 3 SCC 5

[5] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[6] AIR 2003 SC 3044